

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CESAR RODRIGUEZ,

No. 08-03830 CW

Petitioner,

ORDER OF DISMISSAL

v.

JIM MACDONALD, Warden,

Respondent.

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Petitioner, a state prisoner, filed this pro se petition for a writ of habeas corpus challenging the validity of his state conviction. Respondent filed an answer, in which he argued that the petition should be dismissed for failure to exhaust. Petitioner filed a traverse.

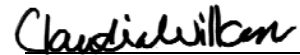
In an Order dated November 2, 2010, the Court found that Petitioner filed a "mixed petition" composed of one exhausted claim and four unexhausted claims. A district court must dismiss "mixed petitions" containing both exhausted and unexhausted claims. See Rose v. Lundy, 455 U.S. 509, 522 (1982) (general rule is that a federal district court must dismiss a federal habeas petition containing any claim as to which state remedies have not been exhausted). Petitioner was directed to respond within fourteen days and "submit a request to dismiss his unexhausted claims and proceed with his exhausted Apprendi claim or a request to stay the petition while he returns to state court to exhaust his unexhausted claims." (Nov. 2, 2010 Order at 6.) The Court further stated: "If he does neither, the Court will dismiss the petition for failure to

1 exhaust State judicial remedies." (Id.)

2 Fourteen days have passed, and Petitioner has not responded to  
3 the Court's November 2, 2010 Order. Accordingly, the petition is  
4 DISMISSED for failure to exhaust state judicial remedies. The  
5 Clerk of the Court shall terminate all pending motions and close  
6 the file.

7 IT IS SO ORDERED.

8 Dated: 11/22/2010



CLAUDIA WILKEN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CESAR RODRIGUEZ,

Plaintiff,

v.

JOHN F SALAZAR et al,

Defendant.

Case Number: CV08-03830 CW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Cesar Rodriguez F-30844  
Sun A202  
La Palma Correctional Center  
5501 N. LaPalma Rd.  
Eloy, AZ 85131

Dated: November 22, 2010

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk

United States District Court  
For the Northern District of California